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No. 80-2116

In the Supreme Court of the United States

October Term, 1981

WILLIAM ARCHIE WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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Petition for Certiorari filed June 13, 1981
Certiorari Granted November 9, 1981

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TABLE OF CONTENTS—JOINT APPENDIX

I. RELEVANT DOCKET ENTRIES JA1

II. SUPERSEDING INDICTMENT JA2

III. EXCERPTS FROM TRIAL TRANSCRIPT JA5

A. Witnesses for the Government—

1. F. N. Gallaspy

Direct Examination [9-10]* JA7

Cross Examination [16] JA8

2. Ollie Stone

Direct Examination [30, 32-34] JA9

Discussion by Court [42-43, 51] JA11

Cross Examination [55-57] JA12

Redirect Examination [57-58] JA13

3. Dan Bowker

Direct Examination [62-63] JA14

4. James R. Cole

Direct Examination [67-71] JA15

Cross Examination [75-76, 78] JA18

Redirect Examination [78-79] JA19

5. Tom Ray

Direct Examination [87-91] JA20

6. Don Rice

Direct Examination [95-99] JA22

7. Kenneth Smith

Direct Examination [104-107] JA25

Redirect Examination [114] JA27

Recross Examination [115] JA28

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*The numbers in brackets refer to the page at which the testimony appeared in the trial transcript.

8. Discussion Between Counsel and the Court [150-151] JA28

9. Statement by the Court [163-164] JA29

B. Witness for Defendant—

1. William Archie Williams
Direct Examination [180, 193-199, 203] JA30

IV. EXCERPTS FROM JURY INSTRUCTIONS [319-324] JA35

V. SENTENCING MINUTES JA39

VI. ORDER ENTERED IN THIS MATTER ON DECEMBER 7, 1981 BY THE SUPREME COURT OF THE UNITED STATES JA40

The following opinion, judgment and order have been omitted in printing this Joint Appendix because they appear on the following pages in the Appendix to the printed Petition For Certiorari:

Opinion of the United States Court of Appeals for the Fifth Circuit in United States v. Williams, 639 F.2d 1311 (5th Cir. 1981) A1-21

Judgment of the United States Court of Appeals for the Fifth Circuit in this matter dated March 19, 1981 ..... A22

Order of the United States Court of Appeals for the Fifth Circuit in this matter denying the Petition for Rehearing and Suggestion for Rehearing En Banc dated April 17, 1981 ..... A23-24

RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

WILLIAMS, WILLIAM ARCHIE

CR 79-50016-01

• • •

DATE	PROCEEDINGS
9–21–79	INDICTMENT-MINUTES; secret, bond set, warrant ordered.
	• • •
10–19–79	SUPERSEDING INDICTMENT - MINUTES; open, bond continued, summons ordered.
	• • •
12–10–79	TRIAL-MINUTES; 1st day. . . .
12–11–79	TRIAL-MINUTES; 2nd day. MOTION (deft.) for Judgment of Acquittal at close of Govt.'s case; DENIED
12–12–79	TRIAL-MINUTES; 3rd day. Court's Jury Instructions. . . . • • • VERDICT: GUILTY ON ALL THREE COUNTS. . . .
1–8–80	ISS. sent. cal. for 1-14-80 1:00 P.M.
1–14–80	RECEIPT, sent. cal. to deft. by Mrs. W.A. Williams on 1-12-80.
1–14–80	CONDITIONS OF Probation.
1–14–80	SENTENCING-Minutes, on superseding indictment—Ct. 3, 6 months custody, Cts. 1&2, imposition of sentence suspended, 5 years super. prob., recommendation that convinement (sic) be at

Federal Prison Camp, Maxwell AFB, Montgomery, deft. released on $2500 OR bond pending appeal. . . .

1–15–80 JUDGMENT, signed and distributed.

1–17–80 NOTICE of Appeal from sentence entered 1-14-80. . . .

(Filed October 19, 1979)

IN THE
UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA

CRIMINAL NO. 79-50016-01
(SUPERSEDING)

18 U.S.C. 656; 1014

UNITED STATES OF AMERICA

VS.

WILLIAM ARCHIE WILLIAMS

INDICTMENT
(Superseding)

THE GRAND JURY CHARGES:

COUNT I

Beginning on or about December 20, 1977 and continuing for a period to May 9, 1978, in the Western District of Louisiana, WILLIAM ARCHIE WILLIAMS, being an officer, that is, President of the Pelican State Bank, Pelican, Louisiana, a bank the deposits of which are insured by the Federal Deposit Insurance Corporation, with intent to injure and defraud said insured bank, did willfully and knowingly misapply and cause to be misapplied monies and

funds of said bank, in the amount of $58,055.44, which had come under his care by virtue of his position as such officer, by converting to his own personal use said sum, all in violation of Title 18, United States Code, Section 656 and 2 (18 U.S.C. 656 and 2).

COUNT II

On or about May 9, 1978, at Pelican, Louisiana, in the Western District of Louisiana, the Defendant, WILLIAM ARCHIE WILLIAMS, did knowingly and willfully overvalue and cause to be overvalued a security, that is a check dated May 9, 1978, drawn on the account of W. A. Williams, Account No. 122-344-5-01, at the Winn State Bank and Trust Company, Winnfield, Louisiana, in the amount of $58,500.00 and payable to cash for the purpose of influencing the Pelican State Bank, Pelican, Louisiana, a bank the deposits of which are insured by the Federal Deposit Insurance Corporation, upon an advance of money and extension of credit in that the Defendant presented said check for deposit at Pelican State Bank, Pelican, Louisiana, and represented and caused to be represented to said bank that said check was of a value equal to the face amount of the check, when in truth and fact, as the Defendant then well knew, there were no sufficient funds in the account of W. A. Williams at the Winn State Bank and Trust Company, to cover said check, all in violation of Title 18, United States Code, Section 1014 (18 U.S.C. 1014).

COUNT III

On or about May 10, 1978, at Winnfield, in the Western District of Louisiana, the Defendant, WILLIAM ARCHIE WILLIAMS, did knowingly and willfully overvalue and cause to be overvalued a security, that is a check, dated May 10, 1978, drawn on the account of W. A. Williams at

the Pelican State Bank, in the amount of $60,000.00 and payable to W. A. Williams for the purpose of influencing the Winn State Bank and Trust Company, Winnfield, Louisiana, a bank whose deposits are insured by the Federal Deposit Insurance Corporation, upon an advance of money and extension of credit in that the Defendant presented said check for deposit at the Winn State Bank and Trust Company and represented and caused to be represented to said bank that said check was of a value equal to the face amount of the check, when in truth and fact, as the Defendant then well knew, there were no sufficient funds in the account of W. A. Williams at the Pelican State Bank to cover said check, all in violation of Title 18, United States Code, Section 1014 (18 U.S.C. 1014).

A True Bill:

/s/ K. R. Allen
Foreman

/s/ J. Ransdell Keene
J. Ransdell Keene
United States Attorney

/s/ Brian P. Joffrion
Brian P. Joffrion
Assistant United States Attorney

By: /s/ A. M. Stroud, III
A. M. Stroud, III
Assistant United States Attorney

(Filed March 11, 1980)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CAUSE NO. CR 79-50016-01

Volume I

UNITED STATES OF AMERICA
Plaintiff

-versus-

WILLIAM ARCHIE WILLIAMS
Defendant

TRIAL COURT:	HONORABLE TOM STAGG, JUDGE
TRANSCRIPT:	REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS IN ABOVE CAUSE
LOCATION:	UNITED STATES DISTRICT COURTHOUSE SHREVEPORT, LOUISIANA
DATE:	December, 1979
TRANSCRIPT FILED:	3/11/80
ORDERED BY:	Mr. BILL CADY, DEFENSE ATTORNEY

BILL HOGAN, RPR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
POST OFFICE BOX 441, SHREVEPORT, LOUISIANA
(318) 226-5293

APPEARANCES:

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

Mr. William Cady, III
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Shreveport, Louisiana

Mr. Martin S. Sanders Jr.
Attorney
P.O. 190
Winnfeild, Louisiana

BE IT REMEMBERED that in the United States District Court for the Western District of Louisiana, Shreveport Division, in the United States Courthouse, in the City of Shreveport, Parish of Caddo, State of Louisiana, on the term December, 1979, the above entitled cause came on for trial before the Honorable Tom Stagg, Judge of said Court, and the proceedings on the trial are in the words and figures following, to-wit:

WITNESS: F. N. GALLASPY

Direct Examination

• • •

[9] 27 Q. Were any—you previously testified that some of Mr. Williams' checks were paid out of the dummy account. In May of 1978, approximately in what amount were his items or his checks paid? A. $60,000, or there about.

28 Q. Did you ever discuss the dummy account with Mr. Williams? A. Yes, sir.

29 Q. And, what was the nature of your discussion with him? A. I tried to impress upon the seriousness of it, and to make him realize what might come about as a result of a continuation of that practice.

30 Q. Did the Board ever ask him to do away with the dummy account during the period of time that he was the President? A. Yes, sir.

31 Q. And, did he? A. No, he did not.

32 Q. Were you present at the bank during the course of an examination in May, 1978, conducted by the state and federal examiners? A. Yes, sir.

33 Q. Did Mr. Williams tender a check to be deposited [10] in his account which was used to clear a number of his personal checks out of the dummy account? A. Yes, sir.

34 Q. And, and, on what bank was that item drawn? A. The Winn State Bank.

THE COURT: Mr. Marshal, would you turn that (indicating). Are you going to ask the witness questions about that exhibit.

MR. JOFFRION: Yes, your Honor.

THE COURT: Mr. Cady, would you come look at the exhibit, please.

(CONFERENCE AT THE BENCH)

THE COURT: Mr. Marshal, would you turn the stand this way so that the witness can see it? Now, if you'll put the exhibit on the stand that will be fine.

35 Q. Mr. Gallaspy, would you review the documents on that board, please?

(CONFERENCE)

THE COURT: Mr. Hogan, note that the objection is made general to the document.

Would you be specific with your questions.

MR. JOFFRION: I've asked the witness to review these items on the board, Your Honor.

* * *

Cross Examination

* * *

[16] 66 Q. That was the Gravamen of my inquiry. Mr. Joffrion questioned you with regard to a check on the Winn State Bank up here; (indicating) did you, be careful; listen to me carefully. Mr. Gallaspy, did you personally receive this check from Mr. Williams or did some other officer of the bank receive possession of this check from him? Or do you remember? A. I don't remember it specifically but it would not have been in order for me to receive it. I didn't receive deposits. It was some employee or maybe some other officer.

67 Q. The reason I ask that is because—I don't think you meant it to but my appreciation of your testimony was that you personally received that check. That is not true. Is it? A. I didn't receive it, in that he gave it to me.

68 Q. The banker Williams didn't hand the check to you, sir— A. No, the bank received it.

* * *

WITNESS: OLLIE STONE

Direct Examination

• • •

[30] 136 Q. On or about May, 1978, did Mr. Williams make a deposit of approximately $58,500 to his personal checking account. A. Yes, sir.

137 Q. Did you handle this deposit for him? A. Yes, sir, I did.

138 Q. Was it at his direction? A. Yes, sir.

139 Q. Was he given credit as a result of this deposit? A. Yes, sir.

140 Q. And, was he given credit for the face amount of the check? A. Yes, sir.

141 Q. After this deposit was made, were a number of checks which had been paid by the bank through the dummy account then credited to his own account? A. Yes, sir.

142 Q. Was this during the examination by the federal and state examiners in May, 1978? A. Yes, sir.

• • •

[32] 143 Q. Had the state examiners, or did the state examiners express any concern to you about the dummy account? A. Yes, sir.

THE COURT: Did they?

A. Yes, sir.

144 Q. Did a $60,000 check drawn on Mr. William's Pelican State bank account subsequently come through for payment? A. Yes, sir.

145 Q. Was a deposit made by Mr. Williams on or about the date that the $60,000 item came in for clearing? A. Yes, sir.

146 Q. And what was the amount of that deposit? A. $65, I believe was the amount—$65,000

[33] 147 Q. And was that $65,000 item ultimately returned to Pelican? A. Yes, sir.

148 Q. Was a subsequent $65,000 deposit made by Mr. Williams? A. Yes, sir.

149 Q. At this time I will ask you to look at the board and review the items on the board. I am going to ask you some questions about these items after you have reviewed them. I will call your attention now to check

(CONFERENCE)

THE COURT: Let the witness continue to look at the exhibit.

150 Q. Mr. Stone, I will call your attention, at this time, to a $58,500 check drawn on the account—on an account at the Winn State Bank signed by W. A. Williams. And, a deposit slip made out in the amount of $58,500 indicating a deposit made to the Pelican State Bank. Can you identify that check and that deposit? A. Yes, sir.

151 Q. Did you write out that deposit slip? A. I did.

152 Q. And is this the check that you deposited? [34] A. It would appear that way, yes, sir.

153 Q. I will also call your attention to a $60,000 check drawn on the Pelican State Bank. Is this $60,000 check the check you referred to in your testimony? I will also call your attention to a $65,000 deposit slip in the name of W. A. Williams. Did you make out this deposit slip? A. Yes, sir, I did.

154 Q. And is this the second deposit that you referred to in your testimony? A. That's correct.

155 Q. Next to this deposit slip there is a notice of not sufficient funds. Are you familiar with that item? A. Yes, sir.

156 Q. Is the $65,000 check referred to in the Pelican State Bank deposit ticket the check that was ultimately returned. A. Yes, sir.

* * *

Discussion by Court

* * *

[42] THE COURT: I'm, I have the extentional elements before me on Section 656.

MR. JOFFRION: Your Honor, the Government need only prove the official elements; whether or not the bank sustained a loss is not relevant.

THE COURT: Mr. Joffrion, I'm reading the essential elements from this chart in front of me states that the Government has to prove and they have to tell the jury—I have to tell the jury that the Government has to prove first, that the accused was an officer of a bank; second, that the bank was insured; third, that the accused willfully misapplied the funds or monies of the bank; and fourth, [43] that the accused acted with the intent to injure and to defraud the bank. There are specific cases that say what a banker can or can't do with respect to a bank and not be considered in law to have intended to injure the bank. In the 1014 Section, there are two essential elements that the defendant made knowingly a false statement or report concerning a material fact to a bank. Secondly, that he made the false statement or report wilfully and with intent to influence the action of the bank. I think I need to give the limiting instructions to the jury at this time, and I intend to do so. To which ruling by the court at this time, the defendant, or counsel on behalf of the defendant does stoutly object.

* * *

[51] * * * On the other charge, under Section 1014, they simply have to prove that the defendant knowingly made a false statement to a bank that was insured, with the intent to influence the action of that bank. Whether the bank lost money—The government doesn't have to prove that. I do believe that the evidence of the

actual financial effect on the bank can be considered by you to determine whether the defendant had the necessary intent to defraud the bank. Now with that brief limiting instruction, Mr. Cady can now continue with his cross-examination of the witness. In case you've forgotten his name; his name was Ollie Stone and Mr. Stone was at the time the cashier of the Pelican State Bank. Mr. Cady, you may continue with your questions to this witness.

* * *

Cross Examination

* * *

[55] 188 Q. This $58,000 check that you talked with Mr. Joffrion about earlier, I noted it is made to cash. Would you tell the circumstances of how that check was deposited? A. Mr. Williams gave it to me and asked me to deposit it.

189 Q. I want you to be real careful about this, sir. Did he ask you to just hold it and then he was going to go to Winnfield and close out another transaction that would cover it? A. He could have, but I don't really remember it that time. I just remember a check.

190 Q. I'm not trying—this isn't a trick question. I'm trying really to determine if my interpretation is possible? A. It's possible, I don't really remember it.

191 Q. If I were able to show you additional documents that may bear that out then you would be able to accept that. Is that correct? [56] A. Yes, sir.

192 Q. Was there any ultimate loss sustained by the bank, taking the check up here February, May 9, 1978, and all these transactions down on through May 23, 1978. Was there any net financial loss to the bank. A. No, sir. Other than the fact that we didn't have that $58,000 to use.

193 Q. In other words, an interest possible loss? A. Right.

194 Q. If I compensated the interest someplace else there was no loss. Is that correct? A. That's correct, yes, sir.

MR. CADY: That's all, thank you. Wait a minute, excuse me.

(CONFERENCE)

195 Q. I believe you testified that you made this deposit slip depositing this check? Is that correct? A. Yes, sir.

196 Q. Again, a trick question, I'd like to know the answer. The deposit slip is dated May 8th and the check is dated May 9th. Was there [57] any reason for that? A. I can't really remember or recall other than it might have been after hours, the deposit slip would have had to go in on the 8th at work and the check could possibly have been brought in later—I'm not real sure.

197 Q. In other words, the check could have been brought in really after the deposit slip then if it's dated that way. A. That's correct.

198 Q. Do you remember whether you typed this check, I notice it's— A. No, sir, I didn't.

199 Q. It was handed to you typed and signed by Mr. Williams? A. The best I can remember I didn't type it.

MR. CADY: Thank you, sir.

Redirect Examination

200 Q. Mr. Stone, did you make deposits to Mr. Williams' account on more than one occasion? A. Yes, sir.

201 Q. Would you make these deposits at his instructions? [58] A. Yes, sir.

202 Q. Do you recall anything else other than him giving you this check and instructing you to deposit it in his account? A. That's all I can remember about it.

203 Q. If Mr. Williams gave you a check and told you not to deposit it in his account would you have deposited it in his account? A. No, I wouldn't.

204 Q. Mr. Cady asked you about whether a loss was sustained by the bank and you testified that the loss to the bank was the use of these funds. Is that correct? A. Yes, sir.

205 Q. Didn't the bank, in fact, lose the use of these funds from the date that the check originally came to the bank? A. The date the checks came to the bank.

206 Q. What period of time is involved? A. December to May, is that what you refer—

* * *

WITNESS: DAN BOWKER

Direct Examination

* * *

[62] 220 Q. Were you the President in May, 1978? A. Yes, sir.

221 Q. Are you familiar with an individual named William Archie Williams? A. Yes, sir.

222 Q. Were you familiar with him in May, 1978? A. Yes, sir.

223 Q. In May, 1978, did you handle a $60,000 deposit for William Archie Williams? A. Yes, sir.

224 Q. Was that on or about May 10, 1978? A. Yes, sir.

225 Q. Did you fill out the deposit slip? A. Yes, sir.

226 Q. Did you do this at Mr. Williams' direction? A. Yes, sir.

227 Q. In what form was the $60,000 deposit? A. It was a check on the Pelican State Bank.

228 Q. I call your attention to this board. Specifically this check for $60,000 drawn on the Pelican State Bank made out to W. A. Williams and a deposit slip on the Winn State Bank for [63] $60,000. Is this the check and deposit slip you referred to in your testimony? A. To my best recollection, yes, sir.

229 Q. And I'm going to show you a Winn State Bank statement.

THE COURT: You want to go over there and look, Mr. Bowker?

WITNESS BOWKER: No, sir.

230 Q. I'm going to ask you to look at these items, I'm going to ask you some questions. A. Okay.

231 Q. Also ask you to look at this Winn State Bank check. Mr. Bowker, after the deposit was made did your bank give Mr. Williams credit based upon this deposit? A. Yes, sir.

232 Q. And, did you give him credit or extend credit to him based on the face amount of the check for $60,000? A. We credited his account for immediate credit.

* * *

WITNESS: JAMES R. COLE

Direct Examination

* * *

[67] QUESTIONS BY MR. JOFFRION:

249 Q. Mr. Cole, would you please give your full name, where you're from, and your occupation, please? A. James R. Cole, my home address is Route 2, Box 706, Many, Louisiana, 71449. I'm employed at the Sabine State Bank & Trust Company, Many, Louisiana, as Executive Vice-President.

250 Q. Were you so employed from and including December 1977, through May, 1978? A. Yes, sir.

251 Q. During that period of time did you personally handle any bank business involving William Archie Williams? A. Yes, sir.

252 Q. Did you have occasion in May, 1978, to prepare a deposit slip for Mr. Williams. A. Yes, sir.

253 Q. And what was the basis of that deposit? [68] A. A loan.

254 Q. And when was that loan made? A. I believe May 18th.

255 Q. In what amount was the loan? A. $65,000.

256 Q. I'm going to call your attention to documents on the board, specifically, a statement from the Sabine State Bank on the account of Mr. Williams, a deposit slip, a check dated May 23, 1978 for $65,000. I'm going to ask you some questions about these documents in addition to a money order made out to Mr. Williams with the remitter as Mr. Williams. Is that deposit slip the deposit slip you just referred to? A. The deposit slip dated May 18th to the account of Melody Ranch is the deposit slip I was referring to, yes, sir.

257 Q. And, is that money order a result of that deposit? A. No, sir. The money order is the result of the check.

258 Q. I'm sorry was there a check on that date, on [69] May 23rd for $65,000. A. On May 23rd there was a check.

259 Q. Was that check used to purchase the money order? A. Yes, sir.

260 Q. Prior to that check for $65,000 being debited was there another check for $65,000? A. Yes, sir.

261 Q. That came to the bank drawn on that account? A. Yes, sir.

262 Q. And, do you have a copy of that check with you? A. Yes, sir.

263 Q. Would you produce it, please?

(CONFERENCE)

264 Q. Mr. Cole, how was that check dated? A. Would you repeat that, please?

265 Q. What was the date on that check? A. May 16th, 1978.

266 Q. What is the amount? A. $65,000.

267 Q. When was the loan for the $65,000 made to Mr. Williams? A. May 18, 1978.

268 Q. On May 16, 1978, what amount of money did Mr. [70] Williams have in his bank account? A. Between $1,000 and $2,000, I can't read—

269 Q. He did not have $65,000? A. No, sir.

270 Q. Was that check subsequently returned to the Pelican State Bank? A. Which check are you referring to?

271 Q. The check that is before you. A. This one.

272 Q. Dated May 16th? A. It was returned to the Pelican State Bank.

273 Q. For what reason? A. Non-sufficient funds.

274 Q. Do you have any records concerning the return of that check? A. I have a copy of the remittance.

275 Q. Would you produce that, please? A. Yes, sir.

276 Q. Is the $65, $65,000 item listed on this slip, the May 16th check? A. Yes, sir.

277 Q. On May 16, 1978, was this $65,000 check a worthless check? [71] A. Yes, sir.

* * *

Cross Examination

* * *

[75] 280 Q. Was covered by the deposit you made to Mr.—to that Melody Ranch, is that not correct, the $65,000. A. No, sir, that check was returned to Commercial National Bank.

281 Q. Did, as a result of this check, did you lose $65,000 is what I'm trying to say? A. No, sir.

282 Q. You got, in fact, after this check you, probably prior to this check you lent him $65,000 on the 18th, is that not correct? A. That is correct, yes, sir.

283 Q. What was, that loan was a real estate mortgage loan? A. Yes, sir.

284 Q. To make a real estate mortgage loan, doesn't the bank have to get a mortgage, and a note, and possibly a title opinion, a mortgage certificate, and several items to show that that's a good loan? A. Yes, sir.

285 Q. You didn't just wake the morning of the 18th [76] and decide to lend Mr. Williams $65,000? A. No, sir.

286 Q. It was, just judging by, because I've done this work for banks myself, it takes a certain amount to do it. I imagine the loan was in the mill at the time this check was written. Would that not be so? A. I would think so, yes, sir. As far as negotiations?

287 Q. Yes, sir. A. I think that is absolutely correct. Yes, sir. As of May 16th is the date you're referring to.

288 Q. Yes, sir. A. Right.

289 Q. It would not have been unreasonable for him to have anticipated at that time that he could cover this check, because he was negotiating a loan with you for $65,000, right? A. That is correct.

* * *

[78] 295 Q. Thank you. I didn't mean to cut you off, go ahead A. It was not entirely worthless. The question was on that date was that check—

296 Q. I understand, but I just wanted to— A. Okay.

297 Q. Show that that man's signature was worth something because you lent him $65,000. Right? A. Yes, sir.

MR. CADY: Thank you, sir.

Redirect Examination

QUESTIONS BY MR. JOFFRION:

298 Q. Did Mr. Williams have $65,000 in the bank on May 16th? A. No, sir.

299 Q. If this check would have arrived at the bank on May 16th would the balance that he had on May 16th, what would you have done with it? A. It would have been returned insufficient.

300 Q. Notwithstanding his signature was on it? [79] A. It was returned insufficient.

MR. JOFFRION: Thank you, sir.

THE COURT: Any further questions, Mr. Cady?

MR. JOFFRION:

301 Q. After the $65,000 was deposited as a result of a loan, weren't checks returned including a $65,000 check, marked insufficient funds? A. To my knowledge that's the only check that was returned.

302 Q. The $65,000 check? A. Yes, sir.

303 Q. Notwithstanding the $65,000 deposit, he still had insufficient funds to cover the check. Isn't that correct? A. That is correct.

* * *

[87] WITNESS: TOM RAY

Direct Examination

* * *

THE COURT: He will only explain the items on the chart plus their relation to each other and then he has to sit back down again.

A. On May 8, 1978, the balance in the dummy account at the Pelican State Bank in Pelican was $117,-672.11 in an overdraft status. As of that date Mr. Williams in his personal checking account at the Pelican State Bank has a balance of $8.33. On May 9th this group of checks here (indicating) totaling $58,065.44 and dating from December 20, 1977, through May 2, 1978, were all cleared through the personal checking account of Mr. Williams. I'm sorry through the personal checking and [88] removed from the overdraft balance in the dummy account, which reduced the balance in the dummy account from over $117,000 down to something over $53,000. There were evidently other items involved in clearing out the dummy account that date other than the $58,065.44 items. In order to be able to post these checks, charge these checks to his personal account, there had to be something in there other than a balance of $8.33. On May 9th, the same date that these checks were charged to his account there was a deposit made to his account of $58,500. It consisted of a check written by Mr. Williams on his personal account at the Winn State Bank in Winnfield in the amount of $58,500, which went with this deposit slip prepared by Mr. Ollie Stone. It was posted to Mr. Williams' personal account on May 9th. Mr. Williams wrote a personal check on May 10th on his personal checking account at Pelican State Bank and it was put with the deposit slip prepared by Mr. Bowker of the Winn State Bank, [89] which was posted to his account at the Winn State Bank of Winnfield on May 10th.

This check that was written on Mr. Williams' account of the Pelican State Bank covered this $58,500 check which he had written and deposited at the Pelican State Bank. This would have caused his personal checking account at the Pelican State Bank to again go in overdraft status without the deposit of the $65,000 check which Mr. Cole testified. Mr. Cole had a copy of that check which was written on the account on Mellow Day Ranch, W. A. Williams, at the Sabine State Bank in Many. That $65,000 check was put with a deposit slip which was written by Mr. Stone at the Pelican State Bank. It was deposited to Mr. Williams' personal account on May 16th. Several days later on May 23rd that $65,000 check written on Melody Ranch, W. A. Williams account at Sabine State Bank was charged back to his account as a non-sufficient funds check; because he had insufficient funds at Sabine State Bank in his Melody Ranch account to cover that check. On the same day [90] on May 23rd, a bank money order from the Sabine State Bank in Many was placed for deposit and was filled out by Ollie Stone. This deposit slip was in the amount of $65,000 was credited to Mr. Williams' account, which ultimately took care of covering the checks which were all cleared through his account on May 9th.

330 Q. Mr. Ray, other than the checks that you have alluded to during your testimony, were there any other credits that you found to be good credits in the amount sufficient to cover these $58-65,000 in checks until May 23rd? A. No, sir.

331 Q. What is the term that is used to describe this type of activity? A. Check kiting.

332 Q. What is the effect of check kiting? Or the purpose of check kiting? A. The purpose of check kiting is to buy time by writing checks on two or more banks when you have insufficient funds in both of them and buy the time that it takes for the checks to [91] clear between

the various banks. It's a form of unsecured loan from the banks.

333 Q. Did your examination of the records indicate whether there was sufficient funds on the day that the $58,500 check was written to cover that check? A. This is at Winn State Bank?

334 Q. The date that that check was written, was there sufficient funds at Winn to cover it? A. No, sir.

335 Q. Were there any funds at Winn other than the initial $4,600 deposit? A. No, sir.

336 Q. The $60,000 deposit that was later made, were there any funds to support that check in Pelican? A. No, sir.

337 Q. For the period of time between May 9th and May 23rd credit was really created by the circulation of these items? A. Yes, sir, unsecured credit.

MR. JOFFRION: We tender this witness, Your Honor.

* * *

WITNESS: DON RICE

Direct Examination

* * *

[95] 355 Q. Let me rephrase the question. During the examination did you come into contact with the account of one, William A. Williams? A. Yes, sir.

356 Q. Who brought this account to your attention? A. One of the assistants, who was assisting on the examination. The assistant examiners normally balance, make sure that all assets of the bank are accounted for, except for the loans, during the examination.

357 Q. After the account was brought to your attention, what, if anything; did you do? The account of Willie Williams. A. She brought roughly $58,000 in cash items that had been held by the bank apparently since—Some

of the individual items had been held since December, 1977. Of course, we were concerned because a bank normally has 24 hours, until midnight of the next business day to [96] return these items. If they do not return these items by midnight of the next business day, then they become an asset of the bank.

358 Q. Did you begin to monitor the Williams' account? A. Yes, I did.

359 Q. During the time that you monitored the account did any activity occur on it that caused you concern? A. The examination started on May 8th. On May 9th, there was a deposit to Mr. Williams' account for $58,500. The cash items were debited against this deposit.

360 Q. I'd ask that you approach the chart now and take this pointer. I'd ask you to refer to the Williams account, W. A. Williams' account. Do you see the $58,500 amount, this appears after the credits to those accounts. What happened after you saw that credit? Did that credit concern you in any manner? A. To the extent that since these items did represent bank assets, and credits are bank assets normally; that's the way we look at it. We did want to make sure that this was a good [97] item, and that the funds, that the check would not be returned.

361 Q. How long did you stay at the bank? A. Approximately 2 weeks.

362 Q. Was that item returned? A. That item was not returned, however a check, this was the deposit of the check on the Winn State Bank; roughly two days later a check drawn on the Pelican Bank deposited to Mr. Williams' account at Winn State Bank was returned. It was drawn on unrelated funds as you can see at this point in time, that the check was written, the balance in the account was roughly $100 to $400.

363 Q. In what amount was that? The check you referring about? A. The $60,000 check.

364 Q. Did anything else happen on that date to cause any type of concern, May 16th? A. This was roughly two days after the $60,000 item appeared and it was apparently held in the dummy account. Then, eventually on May 16th there was a $65,000 check deposited [98] to the account and a $60,000 check was debited to the account, offsetting the entry.

365 Q. Still, we're interested at this point in collected funds. We still want to be sure that the $65,000 was collected. Did you monitor the flow of the $65,000? A. Yes, sir.

366 Q. What, if anything, happened to that? A. The bank was advised by correspondence from Commercial National Bank on May 18th that account was in the process of being determined.

367 Q. What happened after that? A. At that particular point I kept up with the outcome more or less by telephone, conversation with Mrs. Cathey or Stone. We left the bank and completed our examination the last two days of the second week outside the bank.

368 Q. Sir, based on your investigation and examination, did Willie Archie Williams have sufficient funds in the Pelican State Bank between May 9th and 23rd to cover the checks written on his account? A. No.

[99] 369 Q. Why not? A. Because the funds are not collected if the checks are returned to the bank.

370 Q. Based on your prior experience and training as a bank examiner, did you form an opinion about the activities on the Williams' account at the Pelican Bank? A. It appeared that he was buying some time to cover the items.

371 Q. Why do you say this? A. As a normal procedure, as I explained before, items appear in banks quite often but they're covered; not quite often, sometimes, but if they're covered with checks and we always monitor to

make sure that the check doesn't come back or anything representing the check comes back. Until a check is deposited to the account, sent to a correspondent bank, and clears, are those items paid, or they're collected funds.

MR. JOFFRION: I tender the witness.

* * *

WITNESS: KENNETH SMITH

Direct Examination

* * *

[104] 387 Q. Was the account brought to your attention? A. Yes.

388 Q. After you saw this account, did you have occasion to go to Sabine State Bank? A. Yes, I did.

389 Q. Why did you go to the Sabine State Bank? A. Mr. Williams had deposited a check in his account at the Pelican State Bank drawn on the Sabine State Bank that we had serious questions about. We, meaning Mr. Rice and I.

390 Q. Sir, I ask that you step down and approach this chart. I'll give you the pointer and ask you to look at the account of W. A. Williams and indicate on this chart the check about which you had concern. A. The check that we had the primary concern about was this check right here (indicating) for $65,000.

[105] 391 Q. And, why did you have concern? A. In the other checks that we had seen come and go through this account, we; of course were already had some question in our mind about the items in here. This check we just didn't feel like the check was any good.

392 Q. Did you ascertain whether that check was any good? A. Yes, I did, on the afternoon of May 16th. I drove to the Sabine State Bank in Many, and

went into the bank and checked the records of the Sabine State Bank.

393 Q. What, if anything, did you find? A. The check was drawn on Melody Ranch account which was Mr. Williams' account in the Sabine State Bank. I went into the bank's bookkeeping department and checked the computer printouts of his account and ascertained that he didn't that money, that much money on deposit in the bank.

394 Q. Did you ever check the $60,000, the $58,500 check? A. No, sir.

[106] 395 Q. The other two checks? A. Yes. This $58,500 check was drawn on Mr. Williams account at the Winn State Bank in Winnfield, and later on, the same week after I believe I had been to the Sabine State Bank, I had occasion to visit the Winn State Bank and I went into the bookkeeping department and checked to see if this transaction was a valid one.

396 Q. What, if anything, did you find? A. I found out that he did not have the funds at the time the check was written. It was an insufficient fund check.

397 Q. How did you arrive at that conclusion? A. Well, I checked his account and I believe this is the statement right here (indicating) and he did not have the funds on the date the check was written.

398 Q. Based on your investigations, did William Williams have sufficient funds in the Pelican State Bank between May 9th and May 23rd, 1978 to cover the checks written on his personal account? [107] A. No, sir, he didn't.

399 Q. Why not? A. His account was actually in an overdrawn position during that period of time, although it's not reflected on the account.

400 Q. Based on your investigation, did the defendant obtain instant credit by overvaluing securities presented to the Winn Bank? A. Yes, he did.

401 Q. And, to the Sabine Bank? A. Yes, he did.

402 Q. Based on your prior experience as a bank examiner did you form an opinion as to the activities of the defendant on these 3 accounts? A. Yes, I did.

403 Q. And, what is that opinion? A. That it was a kite.

404 Q. Again, briefly, what is the basis for that opinion? A. A kite is the drawing of checks when you don't have the funds available to cover them. This is basically exactly what was done. He didn't have the funds available at the Sabine State [108] Bank or the Winn State Bank at the time the checks were written.

405 Q. One final question, the $60,000 check at Winn Bank, was that overvalued? A. Yes, it was.

* * *

[114] *Redirect Examination*

QUESTIONS BY MR. JOFFRION:

437 Q. Did the Pelican Bank lose any money as a result of this?

Let me rephrase the question. Did they lose the use of their money? A. Exactly.

438 Q. Is this the essence of a kite? I mean is this the effect a kite has on a bank? A. Yes.

439 Q. What money did the Pelican Bank lose the use of? A. It lost the use of the money that was in this dummy account, and the amount of these checks that were flowing, too.

440 Q. In your opinion did this scheme have a detrimental effect on the bank? A. Yes.

441 Q. Why? A. It lost the income that he could have generated had it had these funds available for it's use.

MR. JOFFRION: No further questions.

[115] *Recross-Examination*

QUESTIONS BY MR. SANDERS:

442 Q. Mr. Smith, do you have any conversation with Mr. Williams himself while you were at the bank? I'm looking for a yes or no answer, I haven't asked you what the conversation was about. A. You asked me have I ever had—

443 Q. Let's say when you started your audit on May 8th. A. I'm going to say yes.

444 Q. Did you have any conversation with him on the 9th? A. I don't remember.

445 Q. Did you have any conversation with him before you went to the Sabine State Bank? A. Concerning what?

446 Q. Concerning looking at his account there. A. None that I recall.

447 Q. Did you ever ask him whether the check drawn on the Sabine State Bank was good? A. No.

MR. SANDERS: That's all I have.

* * *

DISCUSSION BETWEEN COUNSEL AND COURT

* * *

[150] THE COURT: Mr. Cady, describe for me, if you will, sir, the different kinds of proof or the different levels of proof, if they are different, in the intent phrase of your argument under Section 656 versus the intent, if any, requirements in 1014.

MR. CADY: I'm not sure I understand your Honor. You want me to explain what evidence gave—

THE COURT: You can speak to your partner about that. He's been reading those other briefs, but I don't think you will find that there is a same intent requirement

in statue 1014 as it is in the statue 656. Mr. Sanders you may rise and say your piece.

MR. SANDERS: I thought I would ask, your [151] Honor, I think that the only intent required in 1014 is to knowingly make a false statement and you do that intentionally and the intent of course, in 656 being the intent to defraud. Is that what your Honor is speaking of?

THE COURT: That's correct. In the two counts, count II and III injury to the bank isn't a factor. You can do that without ever having brought up the question of does it injure the bank. You complete the offense if the jury finds by simply the doing of.

MR. SANDERS: It's knowingly making a false statement.

THE COURT: Correct.

* * *

STATEMENT BY COURT

* * *

[163] THE COURT: I'm glad cases like this come along and I'm also glad that lawyers like these come along cause there's nothing as easy— I have now reread Tidwell, I've gone over marked copy of Southers and I even went to look to see if there was any comfort in Pouche'. The law it seems to me is now clear in this circuit anyway that the requisite intent needed in a section 656 offense can be inferred from the facts offered at trial. This intent exisits, as Tidwell put it, if a person acts knowingly and if the natural result of his conduct would be to injure or defraud the bank even though this may not have been his motive. And further from that, that was quoting from U. S. versus Smith. Then this quote from Golden, citing Galbrith, an intent to injure or defraud is not inconsistent with the desire for the ultimate success and

welfare of the bank. A wrongful misapplication of funds even if made in the hope or belief that the bank's welfare would ultimately [164] be promoted is nonetheless, a violation of the statutes. If the necessary effect is or may be to injure or defraud the bank, it is, I believe it is not necessary to show then that any actual injury to the bank occured, and even further the cases say that the bank could make money out of the scheme or out of violations charged under section 656 but the violation has still occured if the other necessary elements are present. A person's intent to repay a bank to make restitution or to benefit a bank is not a defense to the crime charged nor is it material to the offense. On the other hand now, we spoke also about this exhibit earlier about the offense charged by the Government under 1014 for check kiting. The crucial question in that statute is whether the defendant intended to write checks which he could not reasonably expect to be covered when he wrote them and thereby defraud the bank, or whether he was genuinely involved in the process of depositing funds and then making withdrawals against them.

* * *

WITNESS: WILLIAM ARCHIE WILLIAMS

Direct Examination

* * *

[180] 55 Q. I noticed that on May 10th of 1978 the Government's exhibit G-1, you wrote a check for $60,000. At that time was it your belief that this money was to your credit with that bank? A. That's correct. It should have been to my credit.

56 Q. By that bank, I mean the Pelican Bank. A. The Pelican Bank. In other words, I should have had more money than anything you're talking about.

57 Q. You carried this check to the Pelican Bank? A. That's correct. I carried— I had a bank money order. As you see the check was made to me before and I got a bank money order.

58 Q. Who did you give it to? A. I carried— I gave it to Ollie Stone, which had handled all the business of the bank. The bank examiner was standing there.

59 Q. All right, at the time you wrote the check you believed this to be to your account and therefore this check was fully funded? A. That's correct.

* * *

[193] 426 Q. I'm looking at your check on the Winn State Bank that cashed on May 9, 1978, in the amount of $58,500. Would you start with that check and show the jury and the court exactly what your actions, with regard to that check and these other checks were from that point forward. A. This is on (Indicating) May, I don't know exactly what date, we had the bank examiners in the bank on, I believe, May 9th. I believe that's the date that they say. This check was written on May, I believe it's the 8th, I'm not sure. (CONFERENCE) What the situation was Taylor Motor Company owed the Pelican Bank money. We were in the process of getting into sale their assets in Taylor Motor Company to pay off the Pelican Bank and to pay, where the bank could pay what they owed me too. I left the bank knowing, see this had been going on long before the examiners come. [194] This way going on, to make—

427 Q. What was going on? A. To make the sale to reimburse—

428 Q. Let me get clear about the sale of whom to whom. A. The sale of Taylor Motor Company to Mr. Sanford. They had entered into a couple of agreements, one for three months, and another one they extended for another thirty days. This had been going on.

All the paperwork had been completed, which you don't have it here. The paperwork was done. I knew when I gave that check, I told him, I said the examiners are fixing to go and finish the deal and get through with it, which they knew. We had talked about it. When I gave him that check—

429 Q. Gave who? A. Gave it to Sonny Stone. He knew that I was going to bring, I knew that I was going to bring back this money.

430 Q. How much? A. $60,000 that belongs to me. The same day—

[195] 431 Q. That's exhibit D? A. That's exhibit D, right, dated the same day.

432 Q. D-2? A. D-2. When I left out he had the check in his hand. I went to Winnfield and met Mr. Sanford and his attorney. We got into doing all of these agreements, which was done that day. There are four, I believe. I guaranteed a lot of stuff for the bank.

433 Q. A lot of stuff, like what? A. Let me just tell you. I guaranteed, they owed $250,000, had a note for $250,000 that they owed the bank. In order to make that sale, I had to guarantee that if the Taylor Motor Company did not pay that $250,000 I had to pay it. I personally guaranteed it.

434 Q. Who did you guarantee that to? A. I guaranteed that to Sanford Motor Company, and put it in writing. He said you're worth it and I expect you to pay it if Taylor Motor Company don't pay it. I signed an agreement saying, in order to take care of the bank and that, I guaranteed that $250,000. We went [196] through that. Mr. Sanford put up the $100,000—

435 Q. Is that represented by D-4? A. That's D-4. He put up the $100,000 and he, we called the bank and got the amount of money that I was owed by the Pelican Bank and it's written on one of the agreements. So the

$100,000 was deposited in my account and Mr. Sanford's account where we could write checks to pay whoever need to be paid this money.

436 Q. What was the name of that account? A. The name of the account was T & W Account, W. A. Williams and Tom Sanford. Then we wrote a check out of this account for $60,000 and it's written out to W. A. Williams as the agreement said, W. A. Williams is owned $77,000. In the agreement it said he will receive part of the money owed to him. We only had $60,000 left above the money that was owed for personal debts by Taylor Motor Company under the bulk sale law. Mr. Womack insisted that we take this check and make it [197] to W. A. Williams and Pelican Bank for the $60,000 and get a bank money order and that's what I did. We got a bank money order under his guidance. I took the $60,000 bank money order plus all these things that I had guaranteed in the agreement and carried them back to the bank.

437 Q. This is still May 9th? A. This is May 9th. See the examiners stayed to 5:00. You couldn't have completed this in one day, but it had already been worked up. It took most of the day. I got there before the bank had closed, in other words when I say closed, before the examiners left, before 5:00. I gave the bank money order plus the agreements, a copy of the agreements, to Mr. Stone, and a copy to the examiners; one of the examiners that was there.

438 Q. Did you— When you gave Mr. Stone this check up here, did you make out this deposit slip? A. No, I didn't.

439 Q. You just handed him a fair check? A. That's correct, bank money order, without a [198] deposit slip. I didn't know that that check had been deposited until when I got back. That check, so see I give them

a bank money order. That check had been deposited instead of them waiting until I brough the bank money order, which would have been the thing that they ordinarily would have to have a bank order to negotiate. But they negotiated that check.

THE COURT: Just a minute, Mr. Cady. Pour some water. Pour some water in this thing, please, and pass it up here. Excuse me, Mr. Cady.

MR. CADY: Yes, sir.

THE COURT: Mr. Williams, what did you, you said you gave the bank money order and some other papers to Mr. Stone?

WITNESS WILLIAMS: Correct.

THE COURT: And you gave copies to the bank examiners?

WITNESS WILLIAMS: I gave them a copy, in other words, we had I did it in triplicate originals and I gave them one of the originals. [199] They have it cause it went to the, whoever people they report to. It had all the guarantees as to what I was having to do to complete this deal and it had my $60,000 in a bank money order, which I tended to them.

THE COURT: But whatever you gave Mr. Stone, you gave copies to the bank examiners?

WITNESS WILLIAMS: I certainly did, yes, sir. It was an original, a triplicate, I think they call it triplicate original. Go ahead?

THE COURT: No, Mr. Cady has got to ask a questions.

440 Q. First, let me ask you was this, you can see by looking that this check was not credited to your account as you anticipated. Where was it credited? A. It went into the dummy, to pay— They paid off some cars with my check.

441 Q. Instead of giving you. Did you instruct them to do that? A. No. I brought my money to give to him which would have been in place of that check.

* * *

[202] 455 Q. Did you testify as to what happened, how this check was applied rather than being placed in [203] your account? A. Well, that was found out at a later date. This $60,000 was supposed to have went into my benefit, I guess you would put it, what bought or paid some other obligations of the bank. It went into a cash, they paid off cars in a cash item in the dummy. Additional cars.

456 Q. They did not give you a credit? A. They didn't give me credit.

457 Q. Without your instructions? A. Without my instructions, you better believe it. This other check— The only— When I found this out later is when I borrowed this $65,000. There would have been no point in borrowing this $65,000 if they had applied this money here. When they told me they needed additional money I had property, additional property free and clear. As soon as they told me I went to the Sabine State Bank and they told me they would loan me the money on the property.

* * *

JURY INSTRUCTIONS

* * *

[319] In Counts II and III, the Government alleges that defendant violated Section 1014 of Title 18 which provides, in part:

> Whoever knowingly makes any false statement or report, or willfully over-values any . . . property or security, for the purpose of influencing in any way the action of . . . any bank the deposits of which are

insured by The Federal Deposit Insurance Corporation . . . upon any application, advance . . . commitment, or loan, or any . . . extension of . . . the same (shall be guilty of an offense against the United States.)

Remember a separate crime of offense is charged in Counts II and III. You should consider the evidence pertaining to each count separately. The offense charged in each count is completed only after each of the essential elements you are about to hear is proven beyond a reasonable doubt. If the Government fails to prove any element of [320] the offense charged in that count then the defendant must be acquitted as to that count.

A check is a security for purposes of Section 1014. The Government charges that Mr. Williams was involved in check-kiting—a scheme whereby false credit is obtained by the exchange and passing of worthless checks between two or more banks. This is not simply writing checks on a personal account, which may be temporarily overdrawn. Check-kiting involves more than the mere use of a check with insufficient funds in the bank to meet it. It involves a series of acts, which, taken together, constitute a scheme built upon a series of false representations designed to give the defendant time and credit.

In check-kiting, a bad check is given. Money or credit is received from a bank other than the one on which the check is drawn. This credit is normally used immediately. The check-kiter then deposits a second check in the bank upon which the original check is drawn. The second check is [321] drawn on a different bank and is deposited in the first bank before the original check arrives. Credit for this second check is taken, which covers the first check. The process is carried on, back and forth, until the scheme is discovered.

The essential elements that the Government must prove beyond a reasonable doubt to establish the offense charged in Count II of the indictment are:

FIRST: That on or about May 9, 1978, the defendant, William Archie Williams, did knowingly and willfully make a false statement of a material fact to the Pelican State Bank, that is, that he represented that a check, dated May 9, 1978, drawn on the account of Mr. Williams at the Winn State Bank and Trust Company, Account No. 122-344-5-01, in the amount of $58,500 had sufficient funds to cover the amount of said check.

SECOND: That this false statement [322] concerned a material fact, that is, a fact which would influence the decision of the officers or employees of the Pelican State Bank;

THIRD: That the defendant made the false statement with fraudulent intent to influence the Pelican State Bank to extend credit to the defendant.

The essential elements that the Government must prove beyond a reasonable doubt to establish the offense charged in Count III of the indictment are:

FIRST: That on or about May 10, 1978, the defendant, William Archie Williams, did knowingly and willfully make a false statement of a material fact to the Winn State Bank and Trust Company, that is, that he represented that a check, dated May 10, 1978, drawn on the account of William Archie Williams at the Pelican State Bank in the amount of $60,000 had [323] sufficient funds to cover the amount of said check;

SECOND: That this false statement concerned a material fact, that is, a fact which would influence the decision of the officers or employees of the Winn State Bank;

THIRD: That the defendant made the false statement with fraudulent intent to influence the Winn State Bank and Trust Company to extend credit to the defendant.

A statement is "false" if it relates to a material fact and is untrue and is then know to be untrue by the person making it.

A fact is "material" if it is relevant to the decision to be made by the officers or employees of the institution and has the capacity of influencing them in making their decision.

It is not necessary, however, to prove that the institution involved was, in fact, influenced [324] or misled. The gist of the offense is an attempt to influence such an institution by willfully making a false statement or report concerning a material fact.

The crucial question in check-kiting is whether the defendant intended to write checks which he could not reasonably expect to cover and thereby defraud the bank, or whether he was genuinely involved in the process of depositing funds and then making legitimate withdrawals against them. Hence, proof that the checks were eventually paid might well be pertinent to defendant's initial intent, that is, whether he intended to deceive the bank.

* * *

MINUTE BOOK

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

MONDAY JANUARY 14, 1980

Court met before Judge Tom Stagg pursuant to adjournment at 9:00 a.m.

PRESENT: HON. TOM STAGG, JUDGE, PRESIDING, Bill Hogan, Court Reporter, Bob Terry, Jr., Minute Clerk

* * *

NO. CR-79-50016-01 CRIMINAL

UNITED STATES OF AMERICA

vs.

WILLIAM ARCHIE WILLIAMS

APPEARANCES:

Brian P. Joffrion for Government

William Cady, III for Defendant

Defendant present, represented by counsel aforesaid for sentencing. The Court ruled that on count three it is ordered that defendant be committed to the custody of the Attorney General for a period of six months. On counts one and two, it is ordered that imposition of sentence be suspended and defendant be placed on supervised probation for a period of five years to begin at the completion of his confinement sentence. It is the recommendation of the Court that defendant be committed to the Federal

Prison Camp, Maxwell Air Force Base, Montgomery, Alabama for service of the six months comfinement sentence.

Defendant is to be put on a $2,500.00 OR bond pending his notice of appeal. Two letters filed: (1) Letter dated 1-13-80 from Judge John S. Pickett; (2) Letter dated 9-26-79 from Arnold Kilpatrick. (TS)

At 5:50 p.m., it was ordered that Court before Judge Tom Stagg be adjourned. (TS)

SUPREME COURT OF THE UNITED STATES

No. 80-2116

William Archie Williams,
Petitioner,

v.

United States

The order entered November 9, 1981, is amended to read as follows:

The petition for a writ of certiorari is granted limited to Questions 3 and 4 presented by the petition.

December 7, 1981

(Seal of the Supreme Court of the United States)

A true copy ALEXANDER L. STEVAS

Test:

Clerk of the Supreme Court of the United States

By /s/ (Illegible)
Chief Deputy

CERTIFICATE OF SERVICE

I, Nickolas P. Chilivis, do hereby certify that I have this day served the within and foregoing Joint Appendix by mailing three copies thereof in envelopes properly stamped and addressed as follows:

Rex E. Lee, Esquire
Solicitor General
Richard Wilkens, Esquire
Assistant to the Solicitor General
Department of Justice—Suite 5143
9th & Constitution Avenue, N.W.
Washington, D.C. 20530

This 19th day of February, 1982.

NICKOLAS P. CHILIVIS